

# MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT

## DIVISION OF CREDIT UNIONS

### NEWSLETTER

Volume 5, Number 3

March 21, 2003

#### CHARGING OFF LOANS

When Loans should be charged-off is an issue for every credit union. Technically a charge off should occur when devaluation in the recorded asset amount is realized. This of course is not always an objective decision. It is for this reason many credit unions have established procedures and benchmarks for timely charge-offs. It cannot be overemphasized how important it is to produce conservative and accurate financial statements that are a must for planning and evaluation by interested parties.

Once the decision is made to charge off, a loan the question of board approval becomes an issue. As a control measure and for information purposes the credit union's bylaws require the board to authorize all charged off loans. Historically this authorization was required to take place prior to the actual charge off. This of course delayed charge offs beyond the period in which they should have been recognized and thus resulted in inaccurate financial reporting.

If the credit union so desires the board may authorize management to charge off loans when they are deemed a loss and then report to the board monthly these actions. The board minutes must contain the individual account number, name, and amount of the charge-off and a motion to ratify this action. This method should provide for more routine handling of charge-offs and result in accurate financial reporting.

#### MARCH CALL REPORTS

The Division of Credit Unions will be mailing out the March 2003 first quarter 5300 Call Reports to all credit unions the 1<sup>st</sup> week in April or before

The March 2003 Call Report has two separate forms, the regular 5300 and the new 5300SF. As the NCUA Rules and Regulation base the optional use of the 5300SF upon the credit union's assets at the report date (credit unions with less than \$10 million in assets qualify), we will distribute the 5300 to all credit unions, while credit unions with assets of less than \$15 million as of their December 31, 2002 filing will also receive the 5300SF.

For those credit unions that use the software for 5300 filing, DO NOT USE THE FIELDS THAT APPLY TO THE 5300SF.

Due date for all call reports to be returned to their examiner is April 22, 2003. We ask that you work with your examiner to ensure completion of uploads by this date. Late call reports ultimately delay release of the Financial Performance Reports and other important data reports.

If you have questions, please call your examiner or this office at (573) 751-3419.

#### CREDIT UNION COMMISSION MEETS

The Credit Union Commission met on March 18, 2003 by telephone conference call. Commission members in attendance were Pat Yokley, Bill Humpfer, Sharon Ichord, Cathy Stroud, Pat Macdonald, Lori Levine and John Hanneke. Others attending were April Miller, Cindy Epperson, and Gary Nagel, United Community Credit Union, Mike Wambolt, Attorney General's Office; Becky Kilpatrick, Attorney, Department of Economic Development; Nina Pilger, Michelle Rosner, Aerospace Credit Union, Rosie Holub and Peggy Nalls, Missouri Credit Union Association; Zurett Merridith and John P. Smith, Division of Credit Unions.

The Commission reviewed the field-of-membership expansion application submitted by **Aerospace Credit Union**. More than 3,000 potential members exist within the group. The Commission found the group met the criteria for an exemption from the limitations on groups in 4 CSR 105-3.040.

The appeal of the Director's decision approving the field of membership expansion of United Community Credit Union and the current status of the Telcomm Credit Union appeal were extensively discussed. The Commission directed their attorney to contact legal counsels of the parties involved to determine if a hearing by the Commission should be scheduled at this time.

The Commission's next regular meeting is scheduled for May 7, 2003 in Jefferson City. Commission meetings are open to the public but portions may be closed as provided by the Missouri Sunshine Law.

#### FIELD OF MEMBERSHIP APPLICATION UPDATE

**Springfield Telephone Employees Credit Union** (now **Telcomm Credit Union**) submitted an application to include those persons who reside or work in the 417 telephone Area Code and the 573 (bordered on the north by I-70) telephone Area Code. The Director approved the expansion of **Springfield Telephone Employees Credit Union** to those in the 417 Area Code, but not the 573 Area Code. The decision was published in the November 15, 2000 Missouri Register. On November 30, 2000 the Missouri Bankers Association (MBA) and Century Bank of the Ozarks (CBO) filed an appeal of the decision to the Credit Union Commission. The Commission heard the appeal on March 29, 2001. On May 24, 2001 the Commission upheld the decision of the Director. On August 16, 2001, the decision was released and the Director filed **Springfield Telephone Employees Credit Union's** amended bylaws with the Secretary of State. On September 14, 2001, the MBA and CBO filed a petition for administrative review in Cole County Circuit Court. On November 19, 2001, a hearing was held before Judge Tom Brown, Division 1, Circuit Court of Cole County. The motion to refer the case to another division of the court was granted and the case was referred to Judge Byron Kinder, Division 2. A motion to dismiss the case for lack of standing was heard on January 3, 2002. On January 29, 2002 the court ruled the plaintiffs lack standing to maintain causes of action set forth in their petition and ordered the plaintiffs' petition be dismissed. On March 11, 2002 the MBA and CBO filed an appeal of the decision in the Western Appellate Court of Appeals. Appellant's briefs were due June 3, 2002 with the respondent's briefs due July 3, 2002. A hearing by the Western Appellate Court was held on October 3, 2003 in Kansas City. On January 14, 2003, the Appellate Court upheld the decision of Cole County Circuit Court. On January 14, 2003, the MBA and CBO filed motions for a rehearing and transfer to the Missouri Supreme Court. The Appellate Court on March 4, 2003 denied the motions. On March 19, 2003, the MBA and CBO filed for a hearing with the Missouri Supreme Court.

**South Community Credit Union** submitted an application for those who work or reside in Zip Codes 63109, 63111, 63116, 63123, 63125, 63128, 63129, and Crawford County, Franklin County, Gasconade County and Washington County. **Central Communications Credit Union** submitted an application for those persons who reside or work in the 816 telephone Area Code. The Director approved the applications submitted by **South Community and Central Communications Credit Unions**. These decisions were published in the November 15, 2000 Missouri Register. On November 30, 2000 the MBA and two local banks located in each of the two applicants' field of membership expansion areas filed appeals of the decisions to the Credit Union Commission. The Commission received the record of appeals from all parties on May 24, 2001. On August 9, 2001, the Commission upheld the decisions of the Director. The written decisions were released on January 25, 2002. On February 21, 2002, the MBA and the local banks filed a petition for administrative review in Cole

County Circuit Court. Both cases were assigned to Judge Tom Brown, Division 1. On April 17 the cases were reassigned to Judge Byron L. Kinder, Division 2 and a motion was entered to stay the proceedings until the outcome of the Springfield Telephone Employees case was decided. The cases can be followed on the internet at <http://casenet.osca.state.mo.us/casenet/>; the case numbers are 02CV323402 and 02CV323401.

**Educational Employees Credit Union** (now **Vantage Credit Union**) submitted an application for those who live or work in St. Louis County, St. Charles County, Jefferson County, Cape Girardeau County and Franklin County. The application was published in the December 15, 2000 Missouri Register. The Director approved the application and his decision was published in the February 15, 2001 Missouri Register. On March 1, 2001 the MBA and two banks located in the applicant's field of membership expansion area filed an appeal of the decision to the Credit Union Commission. The Commission received the record of appeal of **Educational Employees Credit Union** on October 19, 2001 and established briefing schedules. On March 5, 2002, the Commission dismissed the appeal due to lack of standing. On July 18, 2002 the MBA and the two banks filed a Petition in Mandamus in Cole County Circuit Court. An order by Cole County District Court staying the case was entered on December 2, 2002. The case can be followed on the internet at <http://casenet.osca.state.mo.us/casenet/>; case number 02CV324797.

**City Utilities Credit Union** submitted an application for community residents and workers in Greene and Christian Counties. The application was published in the June 1, 2001 Missouri Register. The Director approved the application and his decision was published in the August 1, 2001 Missouri Register. On August 14, 2001 the MBA and a local bank located within the applicant's field of membership expansion area filed an appeal of the decision to the Credit Union Commission. On August 8, 2002 the Commission heard and denied the appeal for lack of standing. The decision was released on December 9, 2002. On January 2, 2003, MBA and the local bank filed a Petition in Mandamus in Cole County Circuit Court. The case can be followed on the internet at <http://casenet.osca.state.mo.us/casenet/>; case number 03CV323001.

**First Community Credit Union** submitted an application for individuals who reside or work in the counties of Lincoln, Warren, Franklin, Washington, St. Francois, Ste. Genevieve, Pike, Montgomery, Gasconade and Crawford in the state of Missouri and the City of St. Louis. The application was published in the August 1, 2002 Missouri Register. The Director approved the application and his decision was published in the September 16, 2002 Missouri Register. On September 26, 2002 the MBA and a local bank located within the field of membership expansion area filed an appeal of the decision to the Credit Union Commission. The

Commission at their October 31, 2002 meeting established the briefing schedule for the appeal. The Commission considered the appeal at their January 15, 2003 meeting heard but took no action.

**Alliance Credit Union** submitted an application for those who work or reside in St. Charles County or St. Louis County. The application was published in the November 15, 2002 Missouri Register. The Director approved the application and his decision will be published in the January 16, 2003 Missouri Register. On January 30, 2003, the MBA and Allegiant Bank filed an appeal of the Director's decision with the Credit Union Commission. The Commission at a future meeting will consider the appeal.

**St. Louis Postal Credit Union** submitted an application for those who live or work in the Zip Codes 63005, 63017, 63042, 63043, 63044, 63126, 63127 and St. Charles County. The application was published in the December 2, 2002 Missouri Register. The director approved the application and his decision will be published in the January 16, 2003 Missouri Register. A fifteen calendar period for appeal must occur before the decision is final. On January 30, 2003, the MBA and Midwest Bank Centre filed an appeal of the Director's decision with the Credit Union Commission. The Commission at a future meeting will consider the appeal.

**United Community Credit Union**, an Illinois chartered credit union, submitted an application for those who live or work in the Missouri counties of Lewis, Ralls and Marion. The application was published in the January 2, 2003 Missouri Register. The director approved the application and his decision was published in the February 18, 2003 Missouri Register. On March 4, 2003 the MBA and the Farmers and Merchants Bank and Trust Company filed an appeal of the Director's decision with the Credit Union Commission. The Commission at a future meeting will consider the appeal.

## COURTESY PAY PROGRAMS

Some credit unions are exploring or may have implemented third-party designed programs to generate fee income from members writing checks on insufficient funds. In some cases, these are being considered as replacements for credit unions' traditional overdraft lines of credit.

Our review of some of these programs has concluded, in concurrence with Office of the Controller of the Currency Interpretive Letter #914 (can be on the internet at <http://www.occ.treas.gov/interp/sep01/int914.doc> or contact the Division of Credit Unions for a copy) that there are significant compliance issues and potential contingent liabilities associated with such programs. Not the least of these are legal, credit and reputational risks.

From a public policy perspective, marketing of programs that encourage frequent overdrafts of checking accounts

may promote fiscal irresponsibility among some credit union members.

The Federal Reserve is examining this issue. In its December request for comment on proposed changes in the commentary to Regulation Z, the Federal Reserve asked readers for "Information and comment...on how "bounce protection" services are designed and operated and how these services should be treated for purposes of Truth In Lending in order to assist the Board in determining whether and how to provide guidance on potential coverage under Regulation Z or to address possible concerns under fair lending or other laws."


Credit unions considering and those already participating in such a program should

- Conduct preliminary and ongoing due diligence reviews of program vendors;
- Evaluate the substance of a program as well as the form in which it is presented;
- Thoroughly consider the compliance, legal, supervisory and public policy issues set forth above and in the attachment in determining whether to participate or continue to participate in a program; and
- Obtain guidance from competent legal counsel.

## FROM THE DIRECTOR

Attached with this Newsletter are Bulletins No. 2003-CU-01. From time to time, the Director will publish Bulletins addressed to the board of directors and management of Missouri-chartered credit unions. The Bulletins will provide information and guidance on recent issues, laws, rules, financial services or products. Credit unions should retain the Bulletins for future reference.

Bulletin No. 2003-CU-01 provides guidelines for credit unions considering merger with another credit union. A standard draft of the plan of merger, step 4 of the guidelines, is available from this office or the Missouri Credit Union Association. Your questions or comments on current and future Bulletins are respectively invited and can be sent to me by e-mail at [jpsmith@ded.state.mo.us](mailto:jpsmith@ded.state.mo.us), telephone (573) 751-3419, or U.S. mail.



**John P. Smith, Director**